

1 Thomas M. McInerney, CA Bar No. 162055  
tmm@ogletree.com

2 Brian D. Berry, CA Bar No. 229893  
brian.berry@ogletree.com

3 Lisa M. Bowman, CA Bar No. 253843  
lisa.bowman@ogletree.com

4 OGLETREE, DEAKINS, NASH, SMOAK & STEWART, P.C.  
Steuart Tower, Suite 1300  
5 One Market Plaza  
San Francisco, CA 94105  
6 Telephone: 415.442.4810  
Facsimile: 415.442.4870

7  
8 A. Craig Cleland, pro hac vice  
craig.cleland@ogletree.com  
OGLETREE, DEAKINS, NASH, SMOAK & STEWART, P.C.  
9 191 Peachtree St., NE., Suite 4800  
Atlanta, GA 30303  
10 Telephone: 404.881.1300  
Facsimile: 404.870.1732

11  
12 Elizabeth A. Falcone, CA Bar No. 219084  
elizabeth.falcone@ogletree.com  
OGLETREE, DEAKINS, NASH, SMOAK & STEWART, P.C.  
13 The KOIN Center  
222 SW Columbia Street, Suite 1500  
14 Portland, OR 97201  
Telephone: 503.552.2166  
15 Facsimile: 503.224.4518

16 Attorneys for Defendant GOOGLE LLC

17  
18 **UNITED STATES DISTRICT COURT**  
19 **NORTHERN DISTRICT OF CALIFORNIA**

20 ROBERT HEATH, on behalf of himself,

21 and

22 CHERYL FILLEKES, on behalf of herself  
23 and others similarly situated,

24 Plaintiffs,

25 v.

26 GOOGLE LLC, a Delaware limited liability  
27 company,

28 Defendant.

Case No. 5:15-cv-01824-BLF

**DECLARATION OF BRIAN D. BERRY IN  
SUPPORT OF GOOGLE LLC'S MOTION  
FOR LEAVE FOR RECONSIDERATION  
OF ORDER DENYING MOTION FOR  
DECERTIFICATION**

Dept.: Courtroom 3  
Judge: Hon. Beth Labson Freeman

Complaint Filed: April 22, 2015  
Trial Date: April 1, 2019

1 I, Brian D. Berry, declare as follows:

2 1. I am an attorney duly licensed by the State Bar of California to practice law in this  
3 state. I am also admitted to practice in this Court. I am of counsel with Ogletree, Deakins, Nash,  
4 Smoak & Stewart, P.C., counsel of record for defendant Google LLC (“Google”) in this action. I  
5 am knowledgeable about the facts set forth herein based on my personal knowledge, or by my  
6 review of the documents maintained by Ogletree Deakins in the ordinary course of its business. If  
7 called upon to testify to same, I could and would do so competently and truthfully.

8 2. On July 19, 2018, at 7:05 p.m. Pacific, Plaintiffs served me and other counsel of  
9 record for Google with a second expert report of Dr. David Neumark.

10 3. Attached hereto as **Exhibit 1** is a true and correct copy of the expert report of  
11 Plaintiffs’ expert, Dr. David Neumark, signed on March 5, 2018.

12 4. Attached hereto as **Exhibit 2** is a true and correct copy of the expert report of  
13 Google’s expert, Dr. John H. Johnson, IV, signed on April 2, 2018.

14 5. Attached hereto as **Exhibit 3** is a true and correct copy of is a true and correct copy  
15 of the expert report of Plaintiffs’ expert, Dr. David Neumark, signed on July 19, 2018.

16 6. Attached hereto as **Exhibit 4** is a true and correct copy of the expert report of  
17 Google’s expert, Dr. John H. Johnson, IV, signed on August 16, 2018.

18 Under 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and  
19 correct. I executed this declaration on September 7, 2018 in San Francisco California.

20  
21 /s/ Brian D. Berry

22 Brian D. Berry

23 35516395.1